



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
~~WILLIAMSON~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable George P. Hudson
County Attorney
Jones County
Anson, Texas

Dear Sir:

Opinion No. 0-3243

Re: Commissions due county attorney
on money collected on bond forfei-
ture in liquor injunction case and
disposition of remainder.

Your request for our opinion upon the above captioned
question has been received by this department.

We quote from your letter as follows:

"In the District Court of Jones County, in
the cause of State of Texas vs. Yates Drug, the
Yates Drug made a \$1000.00 bond in an injunction
which was had against them for illegal sales of
liquor. Now by the further illegal sales the
bond has been forfeited and judgment has been
taken against them and they have paid in to the
District Clerk of Jones County \$1000.00 to satis-
fy said judgment.

"We cannot find any law directly on the
point of what disposition should be made with
said \$1000.00, that is what portion should go
to the County Attorney as fee for the prosecu-
tion of the case (or rather what part should
go to the salary fund as the county attorney's
fee) and what should be done with the remainder.

"All of this goes to the county as I under-
stand it, and I contend, that under article 335
R.C.S. 'Whenever a district or county attorney
has collected money for the state or county, he
shall within thirty days after receiving the same
pay in to the treasurer of the state or the coun-
ty in which it belongs, after deducting there-
from and retaining the commissions allowed him
thereon by law. Such district or county attor-
ney shall be entitled to ten per-cent commission

on the first thousand dollars collected by him in any one case for the state or county from any individual or company, and five per-cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the state or for any county, and

"Art. 950 C. C. P. The district or county attorney shall be entitled to ten per-cent of all fines, forfeitures or moneys collected for the state or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per-cent of the amount of said judgments, to be paid out of the amount when collected.' that the county attorney is entitled to the ten per-cent of the \$1000.00 judgment collected by him in prosecution of said case to collection of the judgment.

"If there is further law on this point I can not find any thing on it. I would appreciate an opinion from your department on this subject so that the judge may instruct the district clerk what disposition is to be made of the funds on hand."

We have been advised further by your letter of March 15th, that the injunction and the forfeiture of the bond in question were obtained under Article 666-29, Vernon's Annotated Penal Code, and that the whole \$1000.00 was paid directly to the District Clerk by the defendant in satisfaction of the judgment.

Article 666-29, Vernon's Annotated Penal Code, provides as follows:

"Any room, building, boat, structure, or place of any kind where liquor is sold, manufactured, bartered, or given away in violation of this Act, or of any rule, or regulation of the Board, or where persons are permitted to resort for the purpose of drinking liquor in violation of the law, or any place where such beverages are kept for sale, barter, or gift in violation of law, and all liquor and all property kept and used in said place, hereby are declared to be a common nuisance and any person who main-

tains or assists in maintaining such common nuisances, shall be guilty of a violation of this Act. Any county, or district attorney, or the Board, or any agent or employee of this Board in the county where such nuisance exists, or is kept, or maintained, may maintain an action by injunction in the name of the State, or the Board to abate and to temporarily and permanently enjoin such nuisances. Such proceedings shall be guided by the rules of other injunction proceedings, except that the plaintiff shall not be required to give bond in such action and upon final judgment against the defendant the Court shall order that said room, house, building, structure, boat, or place of any kind shall be closed for a period of one year, or closed for a part of said time and until the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the Court making the order, in the penal sum of not less than One Thousand Dollars (\$1000) payable to the State, and conditioned that liquor will not thereafter be manufactured, possessed, sold, bartered, or given away, or furnished, or otherwise disposed of therein, or kept thereon, or therein, with the intent to sell, barter, or give away, or otherwise dispose of same contrary to law, and that he will pay all fines, costs, and damages assessed against him for any violation of this Act. If any conditions of such bond be violated the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated."

Article 1628, Vernon's Annotated Civil Statutes, provides as follows:

"The funds received by the county treasurer shall be classed as follows, and shall be appropriated, respectively, to the payment of all claims registered in the first, second and third classes:

"1. All jury fees, all money received from the sale of estrays, and all occupation taxes.

"2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, and all fines and forfeitures.

"3. All money received, not otherwise appropriated herein or by the commissioners court."
(underscoring ours)

Proceedings instituted by a county attorney under the hereinabove quoted article (666-29), resulting in the recovery of a judgment on the violation of the conditions of such bond, is a civil action. The remedy afforded for abatement of such places as common nuisances under said article 666-29, is cumulative to the provisions for criminal prosecutions under other subdivisions of Article 666 of Vernon's Annotated Penal Code. *Antner v. State* (Civ. App.), 114 S. W. (2d) 640.

The county attorney's right to commission on money collected in civil proceedings and the amount of such commission is governed by Article 335, Vernon's Revised Civil Statutes, 1925. Article 950, of the Code of Criminal Procedure, confers no right to commissions for the collection of moneys in suits which are in every respect civil in character or in no manner connected with the administration of criminal law, but applies only in cases arising under the Penal Code or the Code of Criminal Procedure. *State v. Moore*, 57 Tex. 307.

We agree, therefore, with the conclusion reached in your letter that the county attorney is entitled to retain ten per cent commission on the \$1000.00 collected on the judgment recovered by him under the facts submitted.

As the proceeding under investigation is a civil case, the district clerk is not entitled to the "... five per cent of the amount of said judgment to be paid out of the amount when collected", under Article 950 of the Code of Criminal Procedure, but must look to the statutes governing his fees in civil cases. *State v. Norrell*, 53 Tex. 427; *State v. Hart*, 96 Tex. 102, 70 S. W. 948, 949. An examination of those statutes will show that no commissions are allowed the district clerk in civil cases.

You are therefore respectfully advised, under the facts stated, that it is the opinion of this department that the county attorney is entitled to a commission of ten per cent on the \$1000.00 collected.

It is the further opinion of this department that the proper disposition to be made of the \$1000.00 in the hands of the district clerk, is for that officer to pay the \$1000.00 into the county treasury and for the treasurer to apply \$100.00 thereof to the credit of the salary fund and the remaining \$900.00 to the credit of the road and bridge fund.

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Thanking you for the additional information requested
by us, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Edgar Pfeil
Edgar Pfeil
Assistant

EP:LM:wc

APPROVED APRIL 2, 1941
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman